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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,656	08/25/2003	Walter K. Lim	57239	3911
7590	03/22/2005		EXAMINER	
Dennis H. Lambert & Associates 7000 View Park Drive Burke, VA 22015				PRICE, CARL D
		ART UNIT	PAPER NUMBER	
		3749		

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/648,656	LIM ET AL. <i>CD</i>
	<b>Examiner</b>	<b>Art Unit</b>
	CARL D. PRICE	3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 10/26/2004; 12/10/2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1,3-5,7,18,25 and 26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1,3-5,7,18,25 and 26 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 10/26/2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.

## DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/26/2004 and 12/10/2004 has been entered.

### Claims

Claims 1, 3 - 5, 7, 18, 25 and 26 are pending.

### Response to Arguments

Applicant's arguments with respect to claims 1, 3-5, 7, 18, 25 and 26 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously considered.

Applicant has amended the claims to include a dispensing cycle “only” up to 1.0 ml of water spray and “insufficient to wet a surrounding surface, but” sufficient to encompass the flame of a candle to extinguish the flame “when the device is held in spaced relationship to the candle flame and” without requiring contact between the device and the candle or candle flame.

Applicant has also amended claim 1 to include a dispensing cycle “only” up to about 1.0 ml of water. With regard to the volume of water dispensed for each cycle, the examiner maintains the position stated in the in the rejection of the claims. That is, in view of Yen's

recognition that optimum parameters of the extinguisher required of extinguishing various types of fires can be determined by the person having ordinary skill in the art, to distribute the spray over a step bell curve, discharge water in each cycle in the amount of 1.0 ml, 0.05 ml or 0.08 ml; dimension and select nozzle elements (i.e.- properly sized mechanical breaks) can be viewed as nothing more than mere matters of choice in design associated with a given use, or application, of a device such as that of Harrison. Also, in regard to claim 1, 3-5, 7, 18, 25 and 26, for the purpose of sufficiently dispersing the mist so as to not overly wet the surface being treated, it would have been obvious to a person having ordinary skill in the art, to modify the water misting device of Harrison, to produce a filled conical spray (i. e. – “a blossom of spray”), in view of the teaching of Goeren et al (see column 2, lines 10-24).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

**Drawings**

The drawings were received on 10/26/2004. The drawings are objected to because these drawings are not in compliance with 37 CFR 1.121(d). Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d).

## INFORMATION ON HOW TO EFFECT DRAWING CHANGES

### Replacement Drawing Sheets

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

### 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

### Claims 1, 3-5, 7, 18, 25 and 26: Rejected under 35 U.S.C./35 U.S.C. 103(a)

Claims 1, 3-5, 7, 18, 25 and 26 are rejected under 35 U.S.C. 103(a) as being obvious over Harrison (US006267581B1) in view of Yen (US006510901B2) and further in view of Goeren et al (US005829648A).

Harrison shows (Figure 2) and discloses (column 3, lines 6-19) a hand held finger and pump operated device for extinguishing a candle flame by dispensing, under pressure, a filled conical spray (B; see column 3, lines) of an aerosol water mist about the flame of a candle to be extinguished. Harrison also recognizes that “countless varieties of hand pumps are available for use in practice of the invention”. Harrison discloses the invention substantially as set forth in applicants’ claims with possible exception to:

- 1) the size of water droplets and the spray distribution (i.e.- a steep bell curve and a filled conical spray),
- 2) the quantity of water discharged in each cycle (i.e. – 1.0 ml, 0.05 ml, 0.08 ml),
- 3) the pump being of the “finger pump” type (claim 7),
- 4) a 0.12 inch mechanical break up insert to form the desired droplets size (claim 18).

Yen teaches (see column 3, lines 48-60; column 4, lines 7-16 and 29-35), from the same open flame extinguishing field of endeavor as Harrison, water mist sprays having droplet with cross-sections between 400 and 1000 microns are known to produce “best flame suppression action and results”. Yen further acknowledges that these water mist droplets “have a very great total surface area, acting to rapidly lower temperature in the flame area and fat zone.”. Yen also recognizes that “the optimum parameters of the extinguisher required of extinguishing various types of fires, including water mist characteristics (spray angle, water droplet sizes and flow rates), discharge pressures, nozzle discharge angles, and the type of nozzles, have been determined.” (see columns 5-8).

In regard to claims 1, 3-5, 7, 18, 25 and 26, in view of the teaching of Yen, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the water mist to produce water droplets sized from about 1.0 to about 1000 microns. Additionally, in view of Yen's recognition that optimum parameters of the extinguisher required of extinguishing various types of fires can be determined by the person having ordinary skill in the art, to distribute the spray over a step bell curve, discharge water in each cycle in the amount of 1.0 ml, 0.05 ml or 0.08 ml; dimension and select nozzle elements (i.e.- properly sized mechanical breaks) can be viewed as nothing more than mere matters of choice in design associated with a given use, or application, of a device such as that of Harrison. Also, in regard to claim 1, 3-5, 7, 18, 25 and 26 for the purpose of sufficiently dispersing the mist so as to not overly wet the surface being treated, it would have been obvious to a person having ordinary skill in the art, to modify the water misting device of Harrison, to produce a filled conical spray (i. e. - "a blossom of spray"), in view of the teaching of Goeren et al (see column 2, lines 10-24).

### Conclusion

See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

See for example, **US002785556 (SMITH)** showing (figure 7) a water nozzle held in spaced relationship to a candle flame and without requiring contact. See also, column 3, lines 46-49 which states **The proportions of the valve elements 18 and 22 can be so correlated with relation to the travel of the valve element 22 as to meter a desired volume of liquid on each stroke."**

**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL D. PRICE  
Primary Examiner  
Art Unit 3749

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